

### **31A-23b-101. Title.**

This chapter is known as the "Navigator License Act."

Enacted by Chapter 341, 2013 General Session

### **31A-23b-102. Definitions.**

As used in this chapter:

- (1) "Compensation" is as defined in:
  - (a) Subsections 31A-23a-501(1)(a), (b), and (d); and
  - (b) PPACA.
- (2) "Enroll" and "enrollment" mean to:
  - (a) (i) obtain personally identifiable information about an individual; and
  - (ii) inform an individual about accident and health insurance plans or public programs offered on an exchange;
  - (b) solicit insurance; or
  - (c) submit to the exchange:
    - (i) personally identifiable information about an individual; and
    - (ii) an individual's selection of a particular accident and health insurance plan or public program offered on the exchange.
- (3) (a) "Exchange" means an online marketplace that is certified by the United States Department of Health and Human Services as either a state-based small employer exchange or a federally facilitated individual exchange under PPACA.  
(b) "Exchange" does not include an online marketplace for the purchase of health insurance if the online marketplace is not a certified exchange in accordance with Subsection (3)(a).
- (4) "Navigator":
  - (a) means a person who facilitates enrollment in an exchange by offering to assist, or who advertises any services to assist, with:
    - (i) the selection of and enrollment in a qualified health plan or a public program offered on an exchange; or
    - (ii) applying for premium subsidies through an exchange; and
  - (b) includes a person who is an in-person assister or a certified application counselor as described in federal regulations or guidance issued under PPACA.
- (5) "Personally identifiable information" is as defined in 45 C.F.R. Sec. 155.260.
- (6) "Public programs" means the state Medicaid program in Title 26, Chapter 18, Medical Assistance Act, and Chapter 40, Utah Children's Health Insurance Act.
- (7) "Resident" is as defined by rule made by the commissioner in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (8) "Solicit" is as defined in Section 31A-23a-102.

Amended by Chapter 290, 2014 General Session

Amended by Chapter 300, 2014 General Session

### **31A-23b-201. Requirement of license.**

- (1) (a) Except as provided in Section 31A-23b-211, a person may not perform, offer to perform, or advertise any service as a navigator in the state, without:

- (i) a valid navigator license issued under this chapter; or
- (ii) a valid producer license under Subsection 31A-23a-106(2)(a) with a line of authority that permits the person to sell, negotiate, or solicit accident and health insurance.

(b) A person may not utilize the services of another as a navigator if that person knows or should know that the other person does not have a license as required by law.

(2) An insurance contract is not invalid as a result of a violation of this section.

Enacted by Chapter 341, 2013 General Session

**31A-23b-202. Qualifications for a license.**

(1) (a) The commissioner shall issue or renew a license to a person to act as a navigator if the person:

(i) satisfies the:

(A) application requirements under Section 31A-23b-203;

(B) character requirements under Section 31A-23b-204;

(C) examination and training requirements under Section 31A-23b-205; and

(D) continuing education requirements under Section 31A-23b-206;

(ii) certifies that, to the extent applicable, the applicant:

(A) is in compliance with the surety bond requirements of Section 31A-23b-207;

and

(B) will maintain compliance with Section 31A-23b-207 during the period for which the license is issued or renewed; and

(iii) has not committed an act that is a ground for denial, suspension, or revocation as provided in Section 31A-23b-401.

(b) A license issued under this chapter is valid for one year.

(2) (a) A person shall report to the commissioner:

(i) an administrative action taken against the person, including a denial of a new or renewal license application:

(A) in another jurisdiction; or

(B) by another regulatory agency in this state; and

(ii) a criminal prosecution taken against the person in any jurisdiction.

(b) The report required by Subsection (2)(a) shall be filed:

(i) at the time the person files the application for an individual or agency license; and

(ii) for an action or prosecution that occurs on or after the day on which the person files the application:

(A) for an administrative action, within 30 days of the final disposition of the administrative action; or

(B) for a criminal prosecution, within 30 days of the initial appearance before a court.

(c) The report required by Subsection (2)(a) shall include a copy of the complaint or other relevant legal documents related to the action or prosecution described in Subsection (2)(a).

(3) (a) The department may:

(i) require a person applying for a license to submit to a criminal background

check as a condition of receiving a license; or

(ii) accept a background check conducted by another organization.

(b) A person, if required to submit to a criminal background check under Subsection (3)(a), shall:

(i) submit a fingerprint card in a form acceptable to the department; and

(ii) consent to a fingerprint background check by:

(A) the Utah Bureau of Criminal Identification; and

(B) the Federal Bureau of Investigation.

(c) For a person who submits a fingerprint card and consents to a fingerprint background check under Subsection (3)(b), the department may request:

(i) criminal background information maintained pursuant to Title 53, Chapter 10, Part 2, Bureau of Criminal Identification, from the Bureau of Criminal Identification; and

(ii) complete Federal Bureau of Investigation criminal background checks through the national criminal history system.

(d) Information obtained by the department from the review of criminal history records received under this Subsection (3) shall be used by the department for the purposes of:

(i) determining if a person satisfies the character requirements under Section 31A-23b-204 for issuance or renewal of a license;

(ii) determining if a person failed to maintain the character requirements under Section 31A-23b-204; and

(iii) preventing a person who violates the federal Violent Crime Control and Law Enforcement Act of 1994, 18 U.S.C. Sec. 1033, from engaging in the business of a navigator or in-person assistor in the state.

(e) If the department requests the criminal background information, the department shall:

(i) pay to the Department of Public Safety the costs incurred by the Department of Public Safety in providing the department criminal background information under Subsection (3)(c)(i);

(ii) pay to the Federal Bureau of Investigation the costs incurred by the Federal Bureau of Investigation in providing the department criminal background information under Subsection (3)(c)(ii); and

(iii) charge the person applying for a license a fee equal to the aggregate of Subsections (3)(e)(i) and (ii).

(4) The commissioner may deny an application for a license under this chapter if the person applying for the license:

(a) fails to satisfy the requirements of this section; or

(b) commits an act that is grounds for denial, suspension, or revocation as set forth in Section 31A-23b-401.

Amended by Chapter 290, 2014 General Session

Amended by Chapter 300, 2014 General Session

### **31A-23b-202.5. License types.**

(1) A license issued under this chapter shall be issued under the license types described in Subsection (2).

(2) A license type under this chapter shall be a navigator line of authority or a certified application counselor line of authority. A license type is intended to describe the matters to be considered under any education, examination, and training required of an applicant under this chapter.

(3) (a) A navigator line of authority includes the enrollment process as described in Subsection 31A-23b-102(4)(a).

(b) (i) A certified application counselor line of authority is limited to providing information and assistance to individuals and employees about public programs and premium subsidies available through the exchange.

(ii) A certified application counselor line of authority does not allow the certified application counselor to assist a person with the selection of or enrollment in a qualified health plan offered on an exchange.

Enacted by Chapter 425, 2014 General Session

**31A-23b-203. Application for individual license -- Application for agency license.**

(1) This section applies to an initial or renewal license as a navigator.

(2) (a) Subject to Subsection (2)(b), to obtain or renew an individual license, an individual shall:

(i) file an application for an initial or renewal individual license with the commissioner on forms and in a manner the commissioner prescribes; and

(ii) pay a license fee that is not refunded if the application:

(A) is denied; or

(B) is incomplete when filed and is never completed by the applicant.

(b) An application described in this Subsection (2) shall provide:

(i) information about the applicant's identity;

(ii) the applicant's Social Security number;

(iii) the applicant's personal history, experience, education, and business record;

(iv) whether the applicant is 18 years of age or older;

(v) whether the applicant has committed an act that is a ground for denial, suspension, or revocation as set forth in Section 31A-23b-401 or 31A-23b-402;

(vi) that the applicant complies with the surety bond requirements of Section 31A-23b-207;

(vii) that the applicant completed the training requirements in Section 31A-23b-205; and

(viii) any other information the commissioner reasonably requires.

(3) The commissioner may require a document reasonably necessary to verify the information contained in an application filed under this section.

(4) An applicant's Social Security number contained in an application filed under this section is a private record under Section 63G-2-302.

(5) (a) Subject to Subsection (5)(b), to obtain or renew a navigator agency license, a person shall:

(i) file an application for an initial or renewal navigator agency license with the commissioner on forms and in a manner the commissioner prescribes; and

(ii) pay a license fee that is not refunded if the application:

- (A) is denied; or
- (B) is incomplete when filed and is never completed by the applicant.
- (b) An application described in Subsection (5)(a) shall provide:
  - (i) information about the applicant's identity;
  - (ii) the applicant's federal employer identification number;
  - (iii) the designated responsible licensed individual;
  - (iv) the identity of the owners, partners, officers, and directors;
  - (v) whether the applicant, or individual identified in Subsections (5)(b)(iii) and (iv), has committed an act that is a ground for denial, suspension, or revocation as set forth in Section 31A-23b-401; and
  - (vi) any other information the commissioner reasonably requires.

Enacted by Chapter 341, 2013 General Session

**31A-23b-204. Character requirements.**

An applicant for a license under this chapter shall demonstrate to the commissioner that:

- (1) the applicant has the intent, in good faith, to engage in the practice of a navigator as the license would permit;
- (2) (a) if a natural person, the applicant is competent and trustworthy; or  
(b) if the applicant is an agency:
  - (i) the partners, directors, or principal officers or persons having comparable powers are trustworthy; and
  - (ii) that it will transact business in a way that the acts that may only be performed by a licensed navigator are performed only by a natural person who is licensed under this chapter, or Chapter 23a, Insurance Marketing-Licensing Producers, Consultants, and Reinsurance Intermediaries;
- (3) the applicant intends to comply with the surety bond requirements of Section 31A-23b-207;
- (4) if a natural person, the applicant is at least 18 years of age; and
- (5) the applicant does not have a conflict of interest as defined by regulations issued under PPACA.

Enacted by Chapter 341, 2013 General Session

**31A-23b-205. Examination and training requirements.**

- (1) The commissioner may require an applicant for a license to pass an examination and complete a training program as a requirement for a license.
- (2) The examination described in Subsection (1) shall reasonably relate to:
  - (a) the duties and functions of a navigator;
  - (b) requirements for navigators as established by federal regulation under PPACA; and
  - (c) other requirements that may be established by the commissioner by administrative rule.
- (3) The examination may be administered by the commissioner or as otherwise specified by administrative rule.

(4) The training required by Subsection (1) shall be approved by the commissioner and shall include:

- (a) accident and health insurance plans;
- (b) qualifications for and enrollment in public programs;
- (c) qualifications for and enrollment in premium subsidies;
- (d) cultural and linguistic competence;
- (e) conflict of interest standards;
- (f) exchange functions; and
- (g) other requirements that may be adopted by the commissioner by administrative rule.

(5) (a) For the navigator line of authority, the training required by Subsection (1) shall consist of at least 21 credit hours of training before obtaining the license, which shall include:

(i) at least two hours of training on defined contribution arrangements and the small employer health insurance exchange; and

(ii) the navigator training and certification program developed by the Centers for Medicare and Medicaid Services.

(b) For the certified application counselor line of authority, the training required by Subsection (1) shall consist of at least six hours of training before obtaining a license, which shall include:

(i) at least one hour of training on defined contribution arrangements and the small employer health insurance exchange; and

(ii) the certified application counselor training and certification program developed by the Centers for Medicare and Medicaid Services.

(6) This section applies only to an applicant who is a natural person.

Amended by Chapter 290, 2014 General Session

Amended by Chapter 300, 2014 General Session

Amended by Chapter 300, 2014 General Session, (Coordination Clause)

Amended by Chapter 425, 2014 General Session, (Coordination Clause)

Amended by Chapter 425, 2014 General Session

### **31A-23b-206. Continuing education requirements.**

(1) The commissioner shall, by rule, prescribe continuing education requirements for a navigator.

(2) (a) The commissioner may not require a degree from an institution of higher education as part of continuing education.

(b) The commissioner may state a continuing education requirement in terms of hours of instruction received in:

- (i) accident and health insurance;
- (ii) qualification for and enrollment in public programs;
- (iii) qualification for and enrollment in premium subsidies;
- (iv) cultural competency;
- (v) conflict of interest standards; and
- (vi) other exchange functions.

(3) (a) For a navigator line of authority, continuing education requirements shall

require:

(i) that a licensee complete 12 credit hours of continuing education for every one-year licensing period;

(ii) that at least two of the 12 credit hours described in Subsection (3)(a)(i) be ethics courses;

(iii) that at least one of the 12 credit hours described in Subsection (3)(a)(i) be training on defined contribution arrangements and the use of the small employer health insurance exchange; and

(iv) that a licensee complete the annual navigator training and certification program developed by the Centers for Medicare and Medicaid Services.

(b) For a certified application counselor, the continuing education requirements shall require:

(i) that a licensee complete six credit hours of continuing education for every one-year licensing period;

(ii) that at least two of the six credit hours described in Subsection (3)(b)(i) be on ethics courses;

(iii) that at least one of the six credit hours described in Subsection (3)(b)(i) be training on defined contribution arrangements and the use of the small employer health insurance exchange; and

(iv) that a licensee complete the annual certified application counselor training and certification program developed by the Centers for Medicare and Medicaid Services.

(c) An hour of continuing education in accordance with Subsections (3)(a)(i) and (b)(i) may be obtained through:

(i) classroom attendance;

(ii) home study;

(iii) watching a video recording; or

(iv) another method approved by rule.

(d) A licensee may obtain continuing education hours at any time during the one-year license period.

(e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commissioner shall, by rule, authorize one or more continuing education providers, including a state or national professional producer or consultant associations, to:

(i) offer a qualified program on a geographically accessible basis; and

(ii) collect a reasonable fee for funding and administration of a continuing education program, subject to the review and approval of the commissioner.

(4) The commissioner shall approve a continuing education provider or a continuing education course that satisfies the requirements of this section.

(5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commissioner shall by rule establish the procedures for continuing education provider registration and course approval.

(6) This section applies only to a navigator who is a natural person.

(7) A navigator shall keep documentation of completing the continuing education requirements of this section for two years after the end of the two-year licensing period to which the continuing education applies.

Amended by Chapter 290, 2014 General Session  
Amended by Chapter 300, 2014 General Session  
Amended by Chapter 300, 2014 General Session, (Coordination Clause)  
Amended by Chapter 425, 2014 General Session, (Coordination Clause)  
Amended by Chapter 425, 2014 General Session

**31A-23b-207. Requirement to obtain surety bond.**

(1) (a) Except as provided in Subsections (1)(b)(ii) and (2), a navigator shall obtain a surety bond in an amount designated by the commissioner by administrative rule to cover the legal liability of the navigator as the result of an erroneous act or failure to act in the navigator's capacity as a navigator.

(b) The navigator shall:

(i) maintain a surety bond at all times during the term of the navigator's license;  
or

(ii) demonstrate to the commissioner that the navigator is capable of covering a legal liability for erroneous acts or failure to act in a manner approved by the commissioner.

(2) A navigator is not required to obtain and maintain a surety bond during a period in which the navigator's scope of practice is limited to assisting individuals with:

- (a) enrollment in public programs; and
- (b) qualification for premium and cost sharing subsidies.

Enacted by Chapter 341, 2013 General Session

**31A-23b-208. Form and contents of license.**

(1) A license issued under this chapter shall be in the form the commissioner prescribes and shall set forth:

- (a) the name and address of the licensee;
- (b) the date of license issuance; and
- (c) any other information the commissioner considers necessary.

(2) A licensee under this chapter doing business under a name other than the licensee's legal name shall notify the commissioner before using the assumed name in this state.

Enacted by Chapter 341, 2013 General Session

**31A-23b-209. Agency designations.**

(1) An organization shall be licensed as a navigator agency if the organization acts as a navigator.

(2) A navigator agency that does business in the state shall designate an individual who is licensed under this chapter to act on the agency's behalf.

(3) A navigator agency shall report to the commissioner, at intervals and in the form the commissioner establishes by rule:

- (a) a new designation under Subsection (2); and
- (b) a terminated designation under Subsection (2).



(4) (a) A navigator agency licensed under this chapter shall report to the commissioner the cause of termination of a designation if:

(i) the reason for termination is a reason described in Subsection 31A-23b-401(4)(b); or

(ii) the navigator agency has knowledge that the individual licensee engaged in an activity described in Subsection 31A-23b-401(4)(b) by:

(A) a court;

(B) a government body; or

(C) a self-regulatory organization, which the commissioner may define by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(b) The information provided to the commissioner under Subsection (4)(a) is a private record under Title 63G, Chapter 2, Government Records Access and Management Act.

(c) A navigator agency is immune from civil action, civil penalty, or damages if the agency complies in good faith with this Subsection (4) by reporting to the commissioner the cause of termination of a designation.

(d) A navigator agency is not immune from an action or resulting penalty imposed on the reporting agency as a result of proceedings brought by or on behalf of the department if the action is based on evidence other than the report submitted in compliance with this Subsection (4).

(5) A navigator agency licensed under this chapter may act in a capacity for which it is licensed only through an individual who is licensed under this chapter to act in the same capacity.

(6) A navigator agency licensed under this chapter shall designate and report to the commissioner, in accordance with any rule made by the commissioner, the name of the designated responsible licensed individual who has authority to act on behalf of the navigator agency in the matters pertaining to compliance with this title and orders of the commissioner.

(7) If a navigator agency designates a licensee in reports submitted under Subsection (3) or (6), there is a rebuttable presumption that the designated licensee acts on behalf of the navigator agency.

(8) (a) When a license is held by a navigator agency, both the navigator agency itself and any individual designated under the navigator agency license are considered the holders of the navigator agency license for purposes of this section.

(b) If an individual designated under the navigator agency license commits an act or fails to perform a duty that is a ground for suspending, revoking, or limiting the navigator agency license, the commissioner may suspend, revoke, or limit the license of:

(i) the individual;

(ii) the navigator agency, if the navigator agency:

(A) is reckless or negligent in its supervision of the individual; or

(B) knowingly participates in the act or failure to act that is the ground for suspending, revoking, or limiting the license; or

(iii) (A) the individual; and

(B) the navigator agency, if the agency meets the requirements of Subsection (8)(b)(ii).

Enacted by Chapter 341, 2013 General Session

**31A-23b-210. Place of business and residence address -- Records.**

(1) (a) A licensee under this chapter shall register and maintain with the commissioner:

(i) the address and telephone numbers of the licensee's principal place of business; and

(ii) a valid business email address at which the commissioner may contact the licensee.

(b) If a licensee is an individual, in addition to complying with Subsection (1)(a), the individual shall register and maintain with the commissioner the individual's residence address and telephone number.

(c) A licensee shall notify the commissioner within 30 days of a change of any of the following required to be registered with the commissioner under this section:

(i) an address;

(ii) a telephone number; or

(iii) a business email address.

(2) Except as provided under Subsection (3), a licensee under this chapter shall keep at the principal place of business address registered under Subsection (1), separate and distinct books and records of the transactions consummated under the Utah license.

(3) Subsection (2) is satisfied if the books and records specified in Subsection (2) can be obtained immediately from a central storage place or elsewhere by online computer terminals located at the registered address.

(4) (a) The books and records maintained under Subsection (2) shall be available for the inspection by the commissioner during the business hours for a period of time after the date of the transaction as specified by the commissioner by rule, but in no case for less than the current calendar year plus three years.

(b) Discarding books and records after the applicable record retention period has expired does not place the licensee in violation of a later-adopted longer record retention period.

Enacted by Chapter 341, 2013 General Session

**31A-23b-211. Exceptions to navigator licensing.**

(1) For purposes of this section:

(a) "Negotiate" is as defined in Section 31A-23a-102.

(b) "Sell" is as defined in Section 31A-23a-102.

(c) "Solicit" is as defined in Section 31A-23a-102.

(2) The commissioner may not require a license as a navigator of:

(a) a person who is employed by or contracts with:

(i) a health care facility that is licensed under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act, to assist an individual with enrollment in a public program or an application for premium subsidy; or

(ii) the state, a political subdivision of the state, an entity of a political subdivision

of the state, or a public school district to assist an individual with enrollment in a public program or an application for premium subsidy;

(b) a federally qualified health center as defined by Section 1905(1)(2)(B) of the Social Security Act which assists an individual with enrollment in a public program or an application for premium subsidy;

(c) a person licensed under Chapter 23a, Insurance Marketing-Licensing, Consultants, and Reinsurance Intermediaries, if the person is licensed in the appropriate line of authority to sell, solicit, or negotiate accident and health insurance plans;

(d) an officer, director, or employee of a navigator:

(i) who does not receive compensation or commission from an insurer issuing an insurance contract, an agency administering a public program, an individual who enrolled in a public program or insurance product, or an exchange; and

(ii) whose activities:

(A) are executive, administrative, managerial, clerical, or a combination thereof;

(B) only indirectly relate to the sale, solicitation, or negotiation of insurance, or the enrollment in a public program offered through the exchange;

(C) are in the capacity of a special agent or agency supervisor assisting an insurance producer or navigator;

(D) are limited to providing technical advice and assistance to a licensed insurance producer or navigator; or

(E) do not include the sale, solicitation, or negotiation of insurance, or the enrollment in a public program;

(e) a person who does not sell, solicit, or negotiate insurance and is not directly or indirectly compensated by an insurer issuing an insurance contract, an agency administering a public program, an individual who enrolled in a public program or insurance product, or an exchange, including:

(i) an employer, association, officer, director, employee, or trustee of an employee trust plan who is engaged in the administration or operation of a program:

(A) of employee benefits for the employer's or association's own employees or the employees of a subsidiary or affiliate of an employer or association; and

(B) that involves the use of insurance issued by an insurer or enrollment in a public health plan on an exchange;

(ii) an employee of an insurer or organization employed by an insurer who is engaging in the inspection, rating, or classification of risk, or the supervision of training of insurance producers; or

(iii) an employee who counsels or advises the employee's employer with regard to the insurance interests of the employer, or a subsidiary or business affiliate of the employer; and

(f) an Indian health clinic or Urban Indian Health Center, as defined in Title V of the Indian Health Care Improvement Act, which assists a person with enrollment in a public program or an application for a premium subsidy.

(3) The exemption from licensure under Subsections (2)(a), (b), and (f) does not apply if a person described in Subsections (2)(a), (b), and (f) enrolls a person in a private insurance plan.

(4) The commissioner may by rule exempt a class of persons from the license

requirement of Subsection 31A-23b-201(1) if:

- (a) the functions performed by the class of persons do not require:
  - (i) special competence;
  - (ii) special trustworthiness; or
  - (iii) regulatory surveillance made possible by licensing; or
- (b) other existing safeguards make regulation unnecessary.

Amended by Chapter 425, 2014 General Session

**31A-23b-301. Unfair practices -- Compensation -- Limit of scope of practice.**

(1) As used in this section, "false or misleading information" includes, with intent to deceive a person examining it:

- (a) filing a report;
- (b) making a false entry in a record; or
- (c) willfully refraining from making a proper entry in a record.

(2) (a) Communication that contains false or misleading information relating to enrollment in an insurance plan or a public program, including information that is false or misleading because it is incomplete, may not be made by:

- (i) a person who is or should be licensed under this title;
  - (ii) an employee of a person described in Subsection (2)(a)(i);
  - (iii) a person whose primary interest is as a competitor of a person licensed under this title; and
  - (iv) a person on behalf of a person listed in this Subsection (2)(a).
- (b) A licensee under this chapter may not:
- (i) use a business name, slogan, emblem, or related device that is misleading or likely to cause the exchange, insurer, or other licensee to be mistaken for another governmental agency, a PPACA exchange, insurer, or other licensee already in business; or
  - (ii) use an advertisement or other insurance promotional material that would cause a reasonable person to mistakenly believe that a state or federal government agency, public program, or insurer:
    - (A) is responsible for the insurance or public program enrollment assistance activities of the person;
    - (B) stands behind the credit of the person; or
    - (C) is a source of payment of an insurance obligation of or sold by the person.
- (c) A person who is not an insurer may not assume or use a name that deceptively implies or suggests that person is an insurer.

(3) A person may not engage in an unfair method of competition or any other unfair or deceptive act or practice in the business of insurance, as defined by the commissioner by rule, after a finding that the method of competition, the act, or the practice:

- (a) is misleading;
- (b) is deceptive;
- (c) is unfairly discriminatory;

- (d) provides an unfair inducement; or
- (e) unreasonably restrains competition.
- (4) A navigator licensed under this chapter is subject to the unfair marketing practices and inducement provisions of Sections 31A-23a-402 and 31A-23a-402.5.
- (5) A navigator licensed under this chapter or who should be licensed under this chapter:
  - (a) may not receive direct or indirect compensation from an accident or health insurer or from an individual who receives services from a navigator in accordance with:
    - (i) federal conflict of interest regulations established pursuant to PPACA; and
    - (ii) administrative rule adopted by the department;
  - (b) may be compensated by the exchange for performing the duties of a navigator;
  - (c) (i) may perform, offer to perform, or advertise a service as a navigator only for a person selecting a qualified health plan or public program offered on an exchange; and
    - (ii) may not perform, offer to perform, or advertise services as a navigator for individuals or small employer groups selecting accident and health insurance plans, qualified health plans, public programs, business, or services that are not offered on an exchange; and
  - (d) may not recommend a particular accident and health insurance plan or qualified health plan.

Amended by Chapter 290, 2014 General Session

Amended by Chapter 300, 2014 General Session

**31A-23b-401. Revocation, suspension, surrender, lapsing, limiting, or otherwise terminating a license -- Rulemaking for renewal or reinstatement.**

- (1) A license as a navigator under this chapter remains in force until:
  - (a) revoked or suspended under Subsection (4);
  - (b) surrendered to the commissioner and accepted by the commissioner in lieu of administrative action;
  - (c) the licensee dies or is adjudicated incompetent as defined under:
    - (i) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or
    - (ii) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and Minors;
  - (d) lapsed under this section; or
  - (e) voluntarily surrendered.
- (2) The following may be reinstated within one year after the day on which the license is no longer in force:
  - (a) a lapsed license; or
  - (b) a voluntarily surrendered license, except that a voluntarily surrendered license may not be reinstated after the license period in which the license is voluntarily surrendered.
- (3) Unless otherwise stated in a written agreement for the voluntary surrender of a license, submission and acceptance of a voluntary surrender of a license does not prevent the department from pursuing additional disciplinary or other action authorized

under:

- (a) this title; or
- (b) rules made under this title in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(4) (a) If the commissioner makes a finding under Subsection (4)(b), as part of an adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act, the commissioner may:

- (i) revoke a license;
- (ii) suspend a license for a specified period of 12 months or less;
- (iii) limit a license in whole or in part; or
- (iv) deny a license application.

(b) The commissioner may take an action described in Subsection (4)(a) if the commissioner finds that the licensee:

(i) is unqualified for a license under Section 31A-23b-204, 31A-23b-205, or 31A-23b-206;

(ii) violated:

- (A) an insurance statute;
- (B) a rule that is valid under Subsection 31A-2-201(3); or
- (C) an order that is valid under Subsection 31A-2-201(4);

(iii) is insolvent or the subject of receivership, conservatorship, rehabilitation, or other delinquency proceedings in any state;

(iv) failed to pay a final judgment rendered against the person in this state within 60 days after the day on which the judgment became final;

(v) refused:

- (A) to be examined; or
- (B) to produce its accounts, records, and files for examination;

(vi) had an officer who refused to:

- (A) give information with respect to the navigator's affairs; or
- (B) perform any other legal obligation as to an examination;

(vii) provided information in the license application that is:

- (A) incorrect;
- (B) misleading;
- (C) incomplete; or
- (D) materially untrue;

(viii) violated an insurance law, valid rule, or valid order of another state's insurance department;

(ix) obtained or attempted to obtain a license through misrepresentation or fraud;

(x) improperly withheld, misappropriated, or converted money or properties received in the course of doing insurance business;

(xi) intentionally misrepresented the terms of an actual or proposed:

- (A) insurance contract;
- (B) application for insurance; or
- (C) application for public program;

(xii) is convicted of a felony;

(xiii) admitted or is found to have committed an insurance unfair trade practice

or fraud;

(xiv) in the conduct of business in this state or elsewhere:

(A) used fraudulent, coercive, or dishonest practices; or

(B) demonstrated incompetence, untrustworthiness, or financial irresponsibility;

(xv) had an insurance license, navigator license, or its equivalent, denied, suspended, or revoked in another state, province, district, or territory;

(xvi) forged another's name to:

(A) an application for insurance;

(B) a document related to an insurance transaction;

(C) a document related to an application for a public program; or

(D) a document related to an application for premium subsidies;

(xvii) improperly used notes or another reference material to complete an examination for a license;

(xviii) knowingly accepted insurance business from an individual who is not licensed;

(xix) failed to comply with an administrative or court order imposing a child support obligation;

(xx) failed to:

(A) pay state income tax; or

(B) comply with an administrative or court order directing payment of state income tax;

(xxi) violated or permitted others to violate the federal Violent Crime Control and Law Enforcement Act of 1994, 18 U.S.C. Sec. 1033 and therefore under 18 U.S.C. Sec. 1033 is prohibited from engaging in the business of insurance; or

(xxii) engaged in a method or practice in the conduct of business that endangered the legitimate interests of customers and the public.

(c) For purposes of this section, if a license is held by an agency, both the agency itself and any individual designated under the license are considered to be the holders of the license.

(d) If an individual designated under the agency license commits an act or fails to perform a duty that is a ground for suspending, revoking, or limiting the individual's license, the commissioner may suspend, revoke, or limit the license of:

(i) the individual;

(ii) the agency, if the agency:

(A) is reckless or negligent in its supervision of the individual; or

(B) knowingly participates in the act or failure to act that is the ground for suspending, revoking, or limiting the license; or

(iii) (A) the individual; and

(B) the agency if the agency meets the requirements of Subsection (4)(d)(ii).

(5) A licensee under this chapter is subject to the penalties for acting as a licensee without a license if:

(a) the licensee's license is:

(i) revoked;

(ii) suspended;

(iii) surrendered in lieu of administrative action;

(iv) lapsed; or

- (v) voluntarily surrendered; and
- (b) the licensee:
  - (i) continues to act as a licensee; or
  - (ii) violates the terms of the license limitation.
- (6) A licensee under this chapter shall immediately report to the commissioner:
  - (a) a revocation, suspension, or limitation of the person's license in another state, the District of Columbia, or a territory of the United States;
  - (b) the imposition of a disciplinary sanction imposed on that person by another state, the District of Columbia, or a territory of the United States; or
  - (c) a judgment or injunction entered against that person on the basis of conduct involving:
    - (i) fraud;
    - (ii) deceit;
    - (iii) misrepresentation; or
    - (iv) a violation of an insurance law or rule.
- (7) (a) An order revoking a license under Subsection (4) or an agreement to surrender a license in lieu of administrative action may specify a time, not to exceed five years, within which the former licensee may not apply for a new license.
  - (b) If no time is specified in an order or agreement described in Subsection (7)(a), the former licensee may not apply for a new license for five years from the day on which the order or agreement is made without the express approval of the commissioner.
- (8) The commissioner shall promptly withhold, suspend, restrict, or reinstate the use of a license issued under this chapter if so ordered by a court.
- (9) The commissioner shall by rule prescribe the license renewal and reinstatement procedures in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Enacted by Chapter 341, 2013 General Session

**31A-23b-402. Probation -- Grounds for revocation.**

- (1) The commissioner may place a licensee on probation for a period not to exceed 24 months as follows:
  - (a) after an adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act, for any circumstances that would justify a suspension under this section; or
  - (b) at the issuance of a new license:
    - (i) with an admitted violation under 18 U.S.C. Sec. 1033; or
    - (ii) with a response to background information questions on a new license application indicating that:
      - (A) the person has been convicted of a crime that is listed by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as a crime that is a ground for probation;
      - (B) the person is currently charged with a crime that is listed by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as a crime that is a ground for probation regardless of whether adjudication is withheld;



(C) the person has been involved in an administrative proceeding regarding any professional or occupational license; or

(D) any business in which the person is or was an owner, partner, officer, or director has been involved in an administrative proceeding regarding any professional or occupational license.

(2) The commissioner may place a licensee on probation for a specified period no longer than 24 months if the licensee has admitted to a violation under 18 U.S.C. Sec. 1033.

(3) The probation order shall state the conditions for revocation or retention of the license, which shall be reasonable.

(4) Any violation of the probation is a ground for revocation pursuant to any proceeding authorized under Title 63G, Chapter 4, Administrative Procedures Act.

Amended by Chapter 290, 2014 General Session

Amended by Chapter 300, 2014 General Session

**31A-23b-403. License lapse and voluntary surrender.**

(1) (a) A license issued under this chapter shall lapse if the licensee fails to:

(i) pay when due a fee under Section 31A-3-103;

(ii) complete continuing education requirements under Section 31A-23b-206 before submitting the license renewal application;

(iii) submit a completed renewal application as required by Section 31A-23b-203;

(iv) submit additional documentation required to complete the licensing process; or

(v) maintain an active license in a resident state if the licensee is a nonresident licensee.

(b) (i) A licensee whose license lapses due to the following may request an action described in Subsection (1)(b)(ii):

(A) military service;

(B) voluntary service for a period of time designated by the person for whom the licensee provides voluntary service; or

(C) other extenuating circumstances, including long-term medical disability.

(ii) A licensee described in Subsection (1)(b)(i) may request:

(A) reinstatement of the license no later than one year after the day on which the license lapses; and

(B) waiver of any of the following imposed for failure to comply with renewal procedures:

(I) an examination requirement;

(II) reinstatement fees set under Section 31A-3-103;

(III) continuing education requirements; or

(IV) other sanctions imposed for failure to comply with renewal procedures.

(2) If a license issued under this chapter is voluntarily surrendered, the license may be reinstated:

(a) during the license period in which the license is voluntarily surrendered; and

(b) no later than one year after the day on which the license is voluntarily

surrendered.

(3) A voluntarily surrendered license that is reinstated during the license period set forth in Subsection (2) may not be reinstated until the person who voluntarily surrendered the license complies with any applicable continuing education requirements for the period during which the license was voluntarily surrendered.

Enacted by Chapter 341, 2013 General Session

**31A-23b-404. Penalties.**

(1) (a) If, after notice and opportunity to be heard, the commissioner finds that the navigator or any other person has not materially complied with this part, or any rule made or order issued under this chapter, the commissioner may order the navigator or other person to cease doing business in the state.

(b) If the commissioner finds that because of the material noncompliance an insurer, any policyholder of an insurer, or a recipient of a public program who used the services of the navigator or other person has suffered any loss or damage due to the material noncompliance, the commissioner may:

(i) maintain a civil action or may intervene in an action brought by or on behalf of the insurer, policyholder, or the recipient of the public program, for recovery of compensatory damages for the benefit of the insurer, policyholder, or recipient of a public program; or

(ii) seek other appropriate relief.

(2) Nothing in this section affects the right of the commissioner to impose any other penalties provided for in this title.

(3) Nothing contained in this section is intended to or shall in any manner alter or affect the rights of policyholders, claimants, creditors, or other third parties.

Enacted by Chapter 341, 2013 General Session